



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
IVY TECH — LAFAYETTE**

LABOR LAW

Did the trial court appropriately grant the School Corporation's motion for a preliminary injunction, enjoining the parties from participating in arbitration proceedings?

*American
Arbitration
Assn. and
North Miami
Ed. Assn. v.
North Miami
Community
Schools and
Davis*

**Appeal
from:**
Miami Circuit
Court

The Honorable
Thomas C.
Perrone,
Special Judge

**Oral
Argument:**
April 10, 2007
10:00 a.m. —
10:40 a.m.
20 minutes
each side

CASE SYNOPSIS

**Facts and Procedural
History**

The North Miami Education Association ("Education Association") is a teacher's organization located in Denver, Indiana, and is the exclusive bargaining representative for all licensed contractual employees of North Miami Community Schools.

The North Miami School Corporation ("School Corporation") is a School Corporation located in Miami County, Indiana. Donald G. Davis was employed by the School Corporation as principal of North Miami Elementary School.

The School Corporation and the Education Association entered into a collective bargaining agreement

("Master Contract") that was in effect from January 20, 2003, through August 31, 2005, but excluded from its terms, among others, employees classified as principals. The Master Contract provided for binding arbitration of grievances.

On January 27, 2003, the School Corporation and Davis entered into a Severance Agreement. Pursuant to the agreement, Davis was to be re-assigned as a teacher for the 2003-04 school year and the School Corporation agreed to provide certain insurance and retirement benefits to Davis.

The Education Association filed a grievance and a demand for arbitration, alleging that the payment of additional insurance and retirement benefits to Davis constituted individual bargaining with a teacher in violation of the Master Contract. The School

*American Arbitration Assn. v. North Miami Community Schools***Case Synopsis (continued)**

Corporation filed a motion to dismiss with the American Arbitration Association and also filed a lawsuit seeking injunctive and declaratory relief to prevent arbitration.

The trial court granted the School Corporation's motion for a preliminary injunction, enjoining the parties from participating in arbitration proceedings. The Education Association now appeals the trial court's entry of a preliminary injunction, contending that the School Corporation failed to establish its entitlement to such relief.

Parties' Arguments

The Education Association argues that the trial court erred in preliminarily enjoining the arbitration proceedings. According to the Education Association, the School Corporation was not entitled to such an extraordinary remedy because it failed to establish, by a preponderance of the evidence, the four factors necessary to grant a preliminary injunction. Specifically, the Education Association argues that the School Corporation failed to show: 1) that its remedies at law were inadequate, thereby causing

irreparable harm; 2) a reasonable likelihood of success on the merits; 3) that the threatened injury to it by proceeding with the arbitration outweighed the threatened harm the injunction would have on the Education Association; and, 4) that the injunction was in the public interest.

The Education Association wants this court to reverse the trial court and remand with instructions directing the parties to participate in the arbitration proceedings before the American Arbitration Association pursuant to the terms of the contract.

The School Corporation, conversely, asks this court to determine there is no enforceable agreement to arbitrate the grievance. The School Corporation states the trial court properly granted the preliminary injunction to stay the arbitration and exercise its jurisdiction to interpret the Master Contract as a matter of law.

TODAY'S PANEL OF JUDGES

Hon. Patricia A. Riley (Jasper County), Presiding

- Judge of the Court of Appeals since January 1994

Patricia A. Riley, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994.

A native of Rensselaer, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993.

Judge Riley is a former associate professor at St. Joseph's College in Rensselaer and is currently an adjunct professor of law at the Indiana University School of Law—Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System.

Judge Riley is the former chair of the Appellant Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

Opinion in this case ex- pected:

By summer
2007

*The Court will
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TODAY'S PANEL OF JUDGES

Hon. Carr L. Darden (Marion County)

- Judge of the Court of Appeals since October 1994

Carr L. Darden was named to the Indiana Court of Appeals by Governor Evan Bayh in October 1994. Prior to his appointment, he served as a presiding judge in the Marion County Superior Court and the Marion County Municipal Court systems. He also served as the Chief Deputy State Public Defender.

Judge Darden received his BS degree from Indiana University School of Business in 1966 and his JD degree from Indiana University School of Law in Indianapolis in 1970. He is also a 1998 graduate of the Judicial College of Indiana and, in 2004, the Indiana Graduate Program for Judges.

He is a native of Nashville, Tennessee but has lived in Indiana most of his life; therefore, he is a proud Hoosier by choice. He and his wife, Lundy Marie, recently celebrated their 50th wedding anniversary.

Judge Darden considered it an honor to serve in the United States military and received an honorable discharge from the U.S. Air Force in 1959.

In November 2004, Judge Darden received the Paul H. Buchanan, Jr. Award of Excellence by the Indianapolis Bar Foundation, and in May 2006, the Distinguished Alumni Award at the annual IU Law Alumni Association reception. He is also the recipient of two Sagamores of the Wabash, Indiana's highest distinguished citizen award.

Judge Darden is deeply involved in his church and community, serving on the boards of numerous charitable organizations. He has participated in several legal and education seminars. He is a lifetime member of the NAACP, the National Bar Association, and the American, Indiana State, and Marion County bar associations. One of the awards that he cherishes most is the recognition by his peers of being "Exceptionally Qualified" to serve as a trial court judge.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

Today's oral argument is the 182nd case the Court of Appeals has heard "on the road" since early 2000.

Among the sites for traveling oral arguments are law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis. Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender.

Judge Robb chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar

Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YMCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the U. S. Navy.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.

ATTORNEYS FOR THE PARTIES

For Appellant, AAA and North Miami Education Association

**Richard Darko
Dann Pecar Newman &
Kleiman, PC
Indianapolis**

Richard J. Darko, a native of Indianapolis, received his bachelor's degree in government from the University of Notre Dame in 1965 and his law degree with honors from Indiana University School of Law in Bloomington in 1968.

A former law professor at both the Indiana School of Law in Indianapolis and the University of Alabama in Tuscaloosa, Mr. Darko has also practiced at three Indianapolis law firms. In 2002, he became Of Counsel to Dann Pekar Newman and Kleiman and was employed by the Indiana State Teachers Association as Deputy Executive Director for Legal Advocacy.

In 1989, then-Governor Evan Bayh appointed Mr. Darko as one of the initial members of the Indiana Horse Racing Commission, where he served until 1997. From 1997 to 2002, he served on the Indiana Gaming Commission, until then-Governor O'Bannon asked him to return to the Horse Racing Commission as Chairperson. From 2004 to 2006, Mr. Darko served on the Hoosier Lottery Commission.

Mr. Darko also is actively involved in non-profit activities, including the Marion County Cancer Society and as President of Big Sisters Indianapolis. A member of St. Luke's Catholic Church, Mr. Darko and his wife, Betty J. Dawson, have three children and two grandchildren.

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

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ATTORNEYS FOR THE PARTIES

For Appellee, North Miami Community Schools and Donald G. Davis:
Donald G. Fern
Fern, Grund & Grund
Peru, Indiana

Donald G. Fern graduated from Ball State University in 1966 with a bachelor's degree in Business Administration and received his J.D. degree from Valparaiso University in 1970. That year, he was admitted to the Indiana Bar and to practice before the U.S. District Courts in the Northern and Southern Districts of Indiana, the U.S. Claims Court, and the U.S. Supreme Court.

Mr. Fern is the School Corporation Attorney for the Maconaquah, North Miami, and Peru School Corporations. He is the General Counsel for the Miami/Cass REMC and the Miami County Board of Health. He drafted legislation for the adoption of Miami Superior Court and served as the Public Defender in Miami County from 1976 to 1981.

Mr. Fern is a member of the Miami County Bar, where he served as president from 1978 to 1984; the Indiana State Bar, where he served as a delegate from 1986 to 2001; and the American Bar Association. He is also a member of the Indiana Trial Lawyers Association, the Association of Trial Lawyers of America, and the Indiana Defense Lawyers Association. He has been an Arbitrator and Panelist for the American Arbitration Association and is a Registered Mediator in Civil and Family Mediation.

His mediation experience includes handling construction projects, bond issues, negotiations, personnel dismissals, student due process hearings, special education hearings, arbitration hearings, fair labor standards hearings, and unfair labor practice claims. He has handled mediation and general litigation of varied school related topics for the North Miami, Maconaquah and Peru School Corporations. He has served as Arbitrator for the American Arbitration Association and numerous insurance companies, and has been a trainer for ICLEF mediation training sessions.

AMICUS BRIEFS

A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.

- There are no amicus briefs in this case.